Aalbers, M.B. (2016) Housing finance as harm.
Crime, Law and Social Change 65: in press.

This paper relies heavily on my earlier work on redlining and subprime lending and several paragraphs are adapted from Aalbers (2009a; 2011; 2016a).

Manuel B. Aalbers
KU Leuven / University of Leuven
Department of Geography and Tourism
Celestijnenlaan 200e – bus 2409
3001 Heverlee, Belgium
manuel.aalbers@kuleuven.be

Abstract There are two dominant discourses on finance: in the first, finance is the great enabler; in the second, finance is the great divider, the driver of social exclusion. What starts out as finance as an enabler can easily turn into finance as a divider. If someone's mortgage loan application is accepted, they may see finance as the enabler of homeownership, but if the loan conditions are predatory in nature, finance becomes a means of extraction. This paper focuses on two ways in which housing finance creates harm: redlining and predatory lending. This paper does not discuss new empirical research on redlining or predatory lending, but provides a selective overview of studies documenting these two forms of housing finance as harm. These two forms of housing finance share a number of characteristics related to exclusion, social groups, geography and local impact. Mortgage redlining is a form of place-based discrimination from housing finance. By delineating neighborhoods in which lenders do not grant mortgage loans they exclude households who want to buy a house and those who cannot sell their house. Predatory lending is a subset of subprime lending. Predatory loans are designed to exploit vulnerable borrowers. The rise of predatory lending had little to do with the mantra of emerging homeownership markets. In conclusion, mortgage lenders have the power to harm potential borrowers through *direct* exclusion (mortgage redlining) or *indirect* exclusion through overpriced loans (subprime and in particular predatory lending).

Keywords: mortgage finance, redlining, subprime lending, predatory loans, social exclusion, homeownership

Acknowledgments
The author would like to thank the reviewers and guest editor for their useful suggestions. The work of the author is part of "The Real Estate/Financial Complex" research project, which is supported by the European Research Council [grant number 313376].

Housing finance as harm

Introduction

There are two dominant discourses on finance. In the first, finance is the great enabler. Finance facilitates, makes economic growth possible, enables people to become homeowners and start businesses. In the second, finance is the great divider. Finance suppresses people, excludes and harms social groups, traps people and countries into debt. Of course, in reality, both stories of finance co-exist; yet it is important to realize that finance is never neutral. As an instrument or source of power, finance is often enabling and constraining at the same time. Moreover, the simplistic idea that more finance is always better needs to be deconstructed. At the macro level more finance can lead to higher inflation. At the micro level people can get trapped into debt.

What starts out as finance as an enabler can easily turn into finance as a divider. If someone's mortgage loan application is accepted, they may see finance as the enabler of homeownership, but if the loan conditions are harmful or predatory in nature, it is easy to see how finance becomes a means of extraction. To Lazzarato, debt has become the fundamental social relation in contemporary, neoliberal societies. The debtor-creditor relationship "intensifies mechanisms of exploitation and domination" (Lazzarato 2011, 7), and here finance acts as the key enabler of 'predatory formations', resulting in displacement, exclusion and expulsions (Sassen 2014).

This paper is about the harm that is inflicted through finance, housing finance in particular. That does not mean that I deny the role of finance as an enabler, but it is simply not what this paper is about. Volumes have been written about the glories of homeownership and—either explicitly or implicitly—about the role of housing finance in enabling the homeownership dream, especially before the global financial crisis that started in 2007. The goal of a volume from the *Joint Center for Housing Studies* at Harvard University, the list of authors reading like a 'who's who' in American housing finance research (both academic and policy), released at the height of the mortgage boom, for example, is clearly a normative one: to increase homeownership among low-income households and to decrease fall-out. A key assumption of the volume is that homeownership is a good thing and something to strive for: homeownership should not only be stimulated because it is intrinsically good, but also because one's chances in society are increasingly dependent on the question if one owns a home (Retsinas and Belsky 2005). Rather than simply being a preference of individual households, homeownership has been pushed ideologically and through policy and fiscal initiatives (e.g. Ronald 2008), not only by financial institutions and neoliberal think tanks and politicians, but also through influential academic research and socio-democratic think tanks and politicians.

Although homeownership does not necessarily need the development and growth of mortgage markets, mortgage lending became the financial tool that was mobilized to facilitate the increase in homeownership rates, as I will argue in the next section. In the early twentieth century—and in many countries until the 1980s—mortgage loans typically were not provided by commercial banks but by a range of more locally embedded institutions serving public goals. Over time, however, mortgage markets mutated from a market facilitating homeownership into one of the many financial

markets in which profits need to be realized. This has changed the nature of mortgage loans as well as the nature of the harm performed through mortgage lending.
Harm is a legal term, but it is not exclusively a legal term. Harm is also a social term. Not everything that is socially considered harmful is legally considered harm. Since socially-defined harm is not codified in law it is a more slippery term than legally-defined harm. That does, however, not imply that harm should be reduced to its legal definition. The tension between both definitions is important and should not be overlooked, as it is here that legal definitions can change under social pressure. Legally-defined harm changes over time and will vary between places and institutional systems. Although the influence of socially-defined harm on legally-defined harm is indirect and not always easy to deduce, there is a dialectic relation between the two definitions of harm. In a critical perspective on harm, not only what is legally-defined as harm should be investigated but also what is socially-defined as harm.

To avoid the confusion between the two different definitions of harm, I will speak of 'social exclusion' rather than socially-defined harm. The concept of social exclusion has French origins (Lenoir 1974) and became a key term in British and European sociological and social policy debates in the 1980s and 1990s. Where the British became interested in measuring social exclusion, those working in the French tradition focus on social mechanisms and processes that result in exclusion (Room 1995). Both traditions acknowledge the multi-dimensional nature of exclusion and look at exclusions in the plural (Somerville 1998). Someone is not necessarily either excluded or included but can be less or more excluded or included. Social exclusion goes beyond simplified understandings of inequality as poverty, by addressing the multiple dimensions of inequality and deprivation, including participation, integration and power (Aalbers 2011; Room 1995). Social exclusion has also been defined as not being allowed or being able to belong to, and the socio-legal scholar Schuyt (2000) includes discrimination, weak legal position, and being considered to represent little economic value in his conceptualization of social exclusion. Indeed, exclusion is produced by a system of social inequality. The legal system is part of this wider system, which explains why exclusion and socially-defined harm are not necessarily considered legally-defined harm.

In this paper I will discuss two ways in which housing finance is harmful or exclusionary: redlining and predatory lending. Rather than presenting new empirical research this paper provides a selective overview of studies documenting these two forms of housing finance as social exclusion. The next section will first define redlining and predatory lending and then discuss four ways in which lenders have expanded the mortgage market. In the subsequent two sections I will discuss how redlining creates social exclusion in the United States and the Netherlands. The penultimate section will discuss subprime and predatory lending as expressions of housing finance that, at least in the US, have largely—but not fully—replaced mortgage redlining practices. Even though the discourse of predatory lending is about the inclusion of those groups and places that were formerly excluded from mortgage lending, I argue that these expressions of housing finance are more constraining than enabling.

The changing nature of mortgage lending

Mortgage redlining is the identification of an area, usually a neighborhood or zip code area, where no mortgage loans are issued. It is a form of place-based discrimination and exclusion from housing finance. By delineating neighborhoods (originally colored red on a map) in which lenders do not grant mortgage loans they directly exclude households from the credit they need to buy a house. Indirectly, they also exclude households who cannot sell their house as a result. As I will demonstrate, redlining is an illegal activity, either because it is explicitly prohibited (as in the US) or because it is considered a form of racial discrimination (as in the Netherlands).

Predatory lending is a subset of subprime lending. Predatory loans are designed to exploit vulnerable and unsophisticated borrowers. A predatory loan has one or more of the following features (NCRC 2002, 4; cited in Squires 2004):

1. higher interest and fees than is required to cover the added risk of lending to borrowers with credit imperfections;
2. abusive terms and conditions that trap borrowers and lead to increased indebtedness;
3. fails to take into account the borrower's ability to repay the loan;
4. violates fair lending laws by targeting women, minorities and communities of color.

Predatory loans are targeted at low-income and minority populations, often living in neighborhoods with high unemployment and declining housing values. Many of these neighborhoods were 'underserved' as a result of earlier waves of redlining. Research shows that "subprime loans are making credit available in communities where credit likely historically has not been—and likely still is not—as readily available" (Goldstein 2004, 40).

Very few countries have implemented so-called tenure-neutral housing policies, i.e. public policies that treat different tenures or modes of housing equally. Tax breaks and government guarantees have perhaps made homeownership more *accessible*, but they have not made homeownership more *affordable*. For example, if mortgage default is publicly insured, it makes it easier to grant more and bigger mortgages. Tax breaks on mortgage interest payments, in effect, create more room for additional mortgage payments, whether in the form of higher interest rates (e.g. subprime and predatory loans) or bigger loans (with a larger sum of interest payments). Here we see a familiar principle at work: when a class of households has more to spend, this generally does not result in a relatively lower wage-share spent on housing or on an improved housing situation. Rather, by expanding the availability of mortgage credit, it drives up prices directly or indirectly (Aalbers 2016b).

Mortgages are a key product for most financial institutions. Over the course of the twentieth century, the share of mortgage loans in banks' total lending portfolios doubled from 30 to 60 percent in a group of countries including the US, Canada, Australia, Japan and 13 European states (Jordà *et al*. 2014). While non-mortgage bank loans remained stable around respectively 41 and 46 percent of GDP between 1914 and 2010, mortgage loans increased from 20 to 64 percent of GDP in the same period (*ibid.*). At the end of 2004, there was €4.5 trillion of outstanding mortgage loans in the European

Union (EU) and €6.1 trillion in the United States. Eight years and a severe crisis later, these figures stand at €6.7 trillion and €7.8 trillion respectively (EMF 2014). These statistics clearly show that the increase in private debt was primarily an increase in mortgage lending (Fernandez and Aalbers 2016).

One important development that has enabled this rapid growth in mortgage finance in countries like the US and the Netherlands is the increasing reliance on the securitization of mortgage loans. Historically, most lenders were 'depository institutions': lenders that not only make loans but also take deposits from savers and keep mortgages on their balance. 'Non-depository institutions' on the other hand, may only need a small amount of operating capital to originate loans if they sell these loans in the secondary mortgage market, a process known as securitization. In the US before the crisis, many non-depository lenders were non-banks, which means nothing more than that they are, by law, not considered banks and therefore regulated lighter. Many commercial banks not only take deposits from savers, but also securitize a significant share of the loans they originate. Securitization shifts the default risk from the lender to the investor in mortgage-backed securities, which made many lenders less careful in extending loans to high-risk borrowers. The large demand for mortgage-backed securities pushed lending in general and subprime and predatory lending in particular.

This massive increase in mortgage lending implies that the mortgage market, since the 1980s, must have rapidly expanded into new territory. First, in advanced economies, a majority of new construction was in the form of owner-occupied housing. Although homeownership is not necessarily financed through mortgage loans, the expansion of homeownership in recent decades is typically largely financed through mortgage debt. Second, existing rental housing, and in particularly social housing, was privatized, starting with the Right to Buy scheme in the United Kingdom, introduced under Thatcher. Although not exactly copied, the UK's Right to Buy inspired other advanced economies to privatize their social housing stocks. Mortgages were typically necessary to enable these privatization waves. But since the expansion of homeownership through new construction and privatization can explain only a small part of the massive growth in mortgage lending we need to explore additional explanations.

Third, lenders have expanded into new territorial markets. Not only developing countries were rebranded as 'emerging markets'; the same happened to neighborhoods within advanced economies (Listokin and Wyly 2000). Formerly redlined neighborhoods, i.e. areas not considered worthy of 'finance as the great enabler', are now included in the logic of mortgage finance. Fourth, and directly related, is the expansion of mortgage lending to groups that were formerly excluded from mortgage loans, e.g. women and racial/ethnic minorities. The exclusion of minorities is intertwined with the exclusion of entire neighborhoods as the redlined neighborhoods tend to be inhabited primarily by minorities. The difference is that in the case of redlining, place is the demarcator (even if it possibly is used as a proxy for something else, e.g. race), implying that everyone within the redlined area is excluded from mortgage credit irrespective of their race/ethnicity, income, gender, credit history, and so on. In the case of racial exclusion, a specific ethnic/racial group will not get a mortgage loan when a member of a different group with similar characteristics (in terms of income, credit history, etc.) will get such a loan.

Redlining in the United States

In the United States, discrimination in housing, including housing credit, became legally prohibited through the 1968 *Fair Housing Act*. But since this wasn't enough to forestall redlining, protests by community organizations in general, and the community reinvestment movement in particular, prepared the US for the passage of the *Federal Home Mortgage Disclosure Act* (HMDA) in 1975 and the *Community Reinvestment Act* (CRA) in 1977. The HMDA opened up mortgage lending data for research by requiring lenders to report granted loans by census tract. Since 1990, the HMDA also requires banks to report the race and income of all mortgage loan applicants. The passing of the HMDA enabled and facilitated redlining research.

The CRA requires lenders to provide credit to the local communities within the states in which they are active, including low- and moderate-income areas. The CRA, however, also emphasizes that lending activities should be undertaken in a safe and sound manner, and does not require banks to make high-risk loss-making loans. Federal regulators then examine and rate banks on their CRA performance and can take financial and legal sanctions to force banks to improve their lending behavior. One matter of complication is that the regulatory work is split among different regulators who each focus on a different type of lender. Some regulators are not as strict in their CRA compliance research and ratings. Moreover, some lenders are able to switch regulators to receive an easier CRA assessment. In sum, the Fair Housing Act prohibited discrimination, the HMDA enabled redlining research and the CRA created an affirmative obligation for lenders to meet local credit needs.

Following the implementation of the HMDA in the US, a lively debate has developed around research that either demonstrates or debunks the existence of redlining and race-based exclusion from mortgage credit (for an overview, see Aalbers 2011; Dymski 2006; Ross and Yinger 2002; Squires 1992). In this debate, a fundamental disagreement exists between empirical researchers, who have evaluated residential mortgage market data, and neoclassical economists, who have theorized about discrimination in credit markets (Nesiba 1996). In virtually every study they conduct, empirical researchers find evidence of place- or race-based discrimination. Yet, neoclassical theorists never see evidence of discrimination as they have deemed it impossible based on theoretical arguments.

Gary Becker is one of the many neoclassical economists who have participated in the debate. Becker won his 1992 Nobel Prize for having extended the domain of microeconomic analysis to a wide range of human behavior and interaction. He has argued that credit market discrimination is impossible because it is either (1) a market phenomenon which cannot be seen independently of other market phenomena with which it is intrinsically correlated, or (2) the result of a lender's biased preference, which will automatically be eliminated by the market. He writes about studies demonstrating redlining:

> Unfortunately, these studies do not use the correct procedure for assessing whether banks discriminate, which is to determine whether loans are more profitable to blacks (and other minorities) than to whites. This requires examining the default and other payback experiences of loans, the interest

> rates charged, and so forth. If banks discriminate against minority applicants, they should earn greater profits on the loans actually made to them than on those to whites. The reason is that discriminating banks would be willing to accept marginally profitable white applicants who would be turned down if they were black. (Becker 1993, 389)

Becker is certainly right that credit market discrimination is related to other market phenomena, but this is not a very strong argument for dismissing discrimination all together. For Becker, fewer or no loans to a specific neighborhood or specific racial group, is evidence that this these potential borrowers are too high-risk to be granted a mortgage loan, because if they were not, lenders would grant them mortgage loans in the same fashion as they do for other borrowers. This bring us to Becker 's second argument: even if a lender excludes potential profitable borrowers, this lender will be 'punished' by the market as other lenders will quickly fill the gap in the market if profits can be realized.

This neoclassical view assumes a perfect market, but such markets do not exist in general and certainly not in mortgage finance. Lenders, like any other market actor, can act on the basis of prejudice. Neoclassical economists obscure the central issue by starting with the conclusion: discrimination in lending does not exist (Nesiba 1996). In contrast, empirical studies on mortgage lending discrimination demonstrate that race- and place-based discrimination continue to exist; for example, predominantly white neighborhoods receive three to four times more loans than predominantly minority neighborhoods. This cannot be 'explained away' by including a wide set of variables as neoclassical economists have tried to do. Moreover, even if they were able to 'explain' discrimination through other variables, this does not take away that it is, in fact, discrimination. Neoclassical economists appear to treat discrimination in the same way as bubbles: if they can construct a model that can 'explain' the empirical patterns recorded, they consider this evidence that discrimination and bubbles do not (and can not) exist.

In the last decades, redlining in the US is less likely to take place because it is prohibited and banks consequently have to make their lending data available for research. In addition, changes in financial markets have made it more likely that lenders charge higher interest rates and closing fees in high-risk areas rather than redlining these areas, i.e. they have resorted to subprime and predatory lending. Yet, we cannot simply conclude that redlining in the US no longer exists. A great deal of research has overlooked the fact that lenders can easily adjust their spatial lending policies: since redlining is measured on the district level, they can engage in cherry-picking behavior by redlining part of a district as long as they grant mortgages in other parts. Moreover, most models used to demonstrate the (non-)existence of redlining do not provide an explanation of de facto redlining: recent redlining research in the US has mostly focused on abstract models rather than on the discovery and explanation of redlining (Aalbers 2005; Hillier 2003).

Redlining in the Netherlands

Even though most research on redlining is carried out in the US, there are also a number of studies documenting redlining processes in other countries. Research in the UK, South Africa, Australia, Canada, Italy and the Netherlands (for an overview, see Aalbers 2011) has demonstrated the existence of redlining, whether in the 1970s and 1980s or in the 1990s and 2000s. The most recent unambiguous example of redlining comes from the city of Rotterdam where in the late 1990s and early 2000s the four largest lenders redlined large parts of the city. Typically, redlined neighborhoods in Rotterdam are areas with relatively high percentages of low-income people, ethnic minorities, rental housing, and low-priced housing (Aalbers 2005; 2011).

The US is quite unique is outlawing redlining in a specific law (CRA) and implementing another law to make mortgage lending data available for research (HMDA). Other countries typically rely on more general laws that prohibit discrimination in (consumer) markets in combination with jurisprudence, codes of conduct and special anti-discrimination organizations. In the Netherlands, the *Algemene Wet Gelijke Behandeling* (AWGB, General Equal Treatment Act) prohibits discrimination on the grounds of race and nationality in the provision of goods and services. This includes not only direct discrimination (i.e. the denial of mortgages to ethnic minorities), but also indirect discrimination (redlined neighborhoods hit ethnic minorities harder). In practice, individuals are more likely to file complaints at the *Commissie Gelijke Behandeling* (CGB, the Dutch Equal Treatment Committee), an independent organization established to promote and monitor compliance with equal treatment laws that was recently merged with other organizations into the *College voor de Rechten van de Mens* (The Netherlands Institute for Human Rights).

In 2006 the CGB commissioned a study into mortgage redlining in the Netherlands (Aalbers 2006; see also Aalbers 2011, Chapter 6; CGB 2006) and it used the results of this study to ask lenders to consider changing their policies. The CGB explained to the lenders how many of the exclusionary practices described in the research report were actually illegal practices according to equal treatment laws. The lenders first denied most of the exclusionary practices, and then, promised to do better. In Parliament questions were asked to the State Secretaries of Finance and Housing.

In addition, the State Secretary of Finance told the banks, who are the biggest mortgage lenders, to end their exclusionary practices. In response, the *Nederlandse Vereniging van Banken* (NVB, Dutch Association of Banks) sent out a statement that they don't violate equal treatment laws. It also stated that "redlining doesn't fit the policies of Dutch banks" (NVB 2006) and that it would adapt its *Code of Conduct* by January 1, 2007. In fact, the NVB had already announced that it would change its Code of Conduct after parliamentary questions in 2003. When the CGB asked the NVB why it had taken it so much time to adapt its Code of Conduct, bureaucratic reasons were cited. In 2007 the NVB finally adapted the Code of Conduct, which now states:

> In assessing an application for a mortgage loan the mortgage lender shall not discriminate on the basis of religion, belief, political opinion, race, nationality, sex, marital status or sexual orientation. In addition, the mere fact that the dwelling to be mortgaged is situated in a given neighbourhood

> or postcode area shall not be a ground for refusing an application. (CHF 2007a, 5–6)

And in the explanatory notes:

> Factors such as race, sex, or sexual orientation should never play a role in the mortgage lender's decision on the application. Direct as well as indirect discrimination are forbidden. If a mortgage lender rejects a loan application simply on the ground of the district or postcode area where the home is situated, this may be regarded as indirect discrimination. It could for instance be that a specific postcode area houses a relatively large population of a certain ethnic background. Such a form of indirect discrimination is fundamentally wrong. (CHF 2007b, 3)

Media, legal and parliamentary pressure has helped: redlining practices were discontinued, at least for the time being. By the fall of 2008, the US foreclosure crisis had developed into a global financial crisis. Many of the Dutch mortgage lenders were hit hard. In the summer of 2009, national newspaper *De Volkskrant* investigated the consequences of the financial crisis on bank lending (Hofs 2009; Van den Eerenbeemt and Rengers 2009) and argued that is had become much harder, if not close to impossible, to get hold of a mortgage in specific neighborhoods in the cities of Rotterdam and The Hague. I followed up on the newspaper articles by interviewing several real estate agents and mortgage intermediaries in Rotterdam and The Hague. They indicated that it had become harder in several neighborhoods—the same areas as in the recent past—to acquire mortgage loans. They listed several cases of prospective borrowers who live up to income requirements but were unable to get a mortgage loan, even though appraisal reports confirmed that the houses were good collateral for the desired amount of the loans (Aalbers 2010).

Subprime and predatory lending

Traditionally, mortgage lending was about trust. With the standardization of mortgage loans, starting in the 1930s in the US, mortgage lending became a 'one size fits all' industry where people would either qualify for a certain type of loan or they would not. Borrower segmentation became more popular with the advent of credit scoring systems and risk-based pricing, the rise of securitization, and the entry of new types of lenders. Nowadays, the basic two types of loans are prime and subprime loans, the latter including Alt-A loans (sometimes considered an intermediate class between prime and subprime lending), predatory loans, NINJA loans (no income, no job or assets), no-doc and stated income/stated asset loans (often called 'liar loans' because the information provided by the borrower is not verified and therefore susceptible to fraud), and other exotic loans. Lenders themselves use an endless variety of names for their loans, but this often has more to do with marketing than with real differences between loan types.

Subprime mortgage lending in the US had been growing fast, from about $35 billion (5 percent of total mortgage originations) in 1994 to $600 billion (20 percent) in 2006 (Avery *et al.* 2006). In some states, such as Nevada, subprime loans accounted for more than 30 percent of the loans originated in 2006. In that year 13 percent of outstanding loans were subprime, but 60 percent of the loans in foreclosure were subprime, up from

30 percent in 2003 (Nassar 2007). Subprime lending is often defined as lending to a low-income borrower with poor credit, but this would be a misrepresentation of the essence of subprime lending, which is lending at higher fees and interest rates whether or not the borrower actually has bad credit or a low income (Aalbers 2009a). Subprime loans were pushed on borrowers—low- and moderate-income as well as middle and high-income—because they brought in more money, not simply because lenders and brokers were pushed to sell them.

It is often argued that subprime lending enabled many people that were formerly excluded from homeownership, i.e., low-income and ethnic minority groups, to buy a house and enjoy the benefits of homeownership. This is questionable for at least two reasons. Firstly, many of these borrowers had bought properties at the low-end of the market that needed improvement work and because of the high interest rates their monthly expenses often went up much faster than their income and became unmanageable. Homeownership for many subprime homebuyers became a burden.

Secondly, most subprime loans were not enabling homeownership as more than half of them were refinance loans and second mortgages—in other words, loans for people who already owned a mortgaged property. Most of the refinance loans were designed in such a way that they looked cheaper than the original loan, but would, in fact, turn out more expensive for the borrowers and more profitable for the mortgage broker and the lender. Adjustable Rate Mortgages (ARMs) are a case in point: one type of ARM known as a 2/28 or 3/27 will start with a low interest rate, but after 2 or 3 years the interest rate resets to a much higher rate. Borrowers are shown the initial, low interest rate while the higher interest rate is hidden in the small print of the mortgage contract.

A subset of subprime lending is known as predatory lending. Predatory lenders charge excessive fees and interest rates and originated loans that were not beneficial for borrowers (Squires 2004). Originally predatory lending was seen as a small part of the subprime mortgage market, but research has demonstrated predatory lending is not an exception but rather something very common in subprime lending. Often homeowners do not have a full understanding of the mortgage lending process and fail to hire experts, not only at the time of mortgage origination, but also when the first payment problems arise (Engel and McCoy 2002). Predatory lenders use sophisticated marketing techniques to reach people with little education or prior lending experience (Carr and Schuetz 2001; Quercia *et al*. 2004; Newman 2012).

Predatory loans were sold mostly in neighborhoods with ethnic minority populations. Almost half of the loans in minority areas were predatory compared to 22 percent in white areas (Avery *et al*. 2007). Furthermore, African-Americans received more than twice as many high-priced loans as Whites, even after controlling for the risk level of the borrower (Schloemer *et al.* 2006). These problems are not new: in the years before the crisis researchers pointed out how subprime and predatory lending result in rising default and foreclosure rates (e.g. Pennington-Cross 2002; Squires 2004; Wyly *et al*. 2009).

Subprime, and in particular predatory, loans frequently result in mortgage foreclosures at the individual level and housing abandonment at the neighborhood level (Immergluck

2009; Squires 2004). It is not just defaulting borrowers that are hit; in addition, there are severe spillover effects on housing prices, crime and neighborhood decline (e.g. Immergluck 2009). Besides borrowers and neighborhoods, cities are also hit hard because their tax income goes down in line with property foreclosures and lower real estate prices, while their expenses increase as a result of foreclosures and property crime.

Since the 1990s most mortgage lenders were non-banks that did not have to abide by banking regulation and could operate within an almost non-existing framework. On the other hand, several American states such as North Carolina and West Virginia introduced additional state regulation. In 2003, four years before the crisis, New Mexico even introduced a *Home Loan Protection Act*. Yet, the federal government blocked many state initiatives and states were forced to withdraw certain acts and regulations (Immergluck 2009; Wyly et al. 2009). Something similar happened on a lower level. In Ohio, the City of Cleveland, which includes the zip code with the highest number of foreclosures in the country and already had a foreclosure crisis since the beginning of this century, tried to introduce local regulation to make abusive lending practices more difficult, but the State of Ohio argued that it was not the City's responsibility to come up with financial regulation. In other words, while some state institutions enabled subprime lending by ignoring their regulatory responsibilities, other state and local institutions tried, often unsuccessfully, to combat the negative aspects of the new financial regime.

Equally important, the CRA that was supposed to ensure that banks provide fair credit to all neighborhoods, was unable to keep up with changes in the structure of the US mortgage market. During the subprime mortgage and foreclosure crisis the CRA got heavily criticized for enabling subprime lending and therefore being at the root of the global financial crisis. It is argued that the CRA forced lenders to grant loans to low-income borrowers who should not have been given a loan under 'normal' conditions (e.g. Dilanian 2008; Liebowitz 2008). There are at least five reasons why the CRA should not be blamed for promoting subprime and predatory lending (Aalbers 2009b):

1. The CRA did not call for risky loans to subprime borrowers, but for sound loans to minority and low-income borrowers. The CRA does not force banks to grant loans to just about anyone; it demands that access to credit is provided on equal terms.
2. The CRA only applies to the important lenders of the time the CRA was written: bank lenders and savings and loans institutions. In the decade before the crisis, more than two-thirds of all mortgage loans and 77 to 84% of all subprime loans were provided by so-called non-bank lenders, i.e. lenders that are not CRA compliant (Ip and Paletta 2007; Goldstein and Hall 2008).
3. Lenders did not sell risky loans because CRA forced them to do so; most subprime loans were sold to prime borrowers whose credit scores should have classified them for prime loans, implying that lenders systematically overcharged borrowers (Brooks and Simon 2007). Only 6% of all subprime loans were sold to low- and moderate-income borrowers by CRA-compliant lenders (Kroszner 2009).
4. Most subprime loans were not used to buy a home, but were refinance loans, implying that subprime loans did not enable homeownership for minority or

low-income borrowers. Most of these refinance loans were designed to appear cheaper than the original loan, but were in fact more expensive for the borrowers and more profitable for the mortgage broker and the lender.

5. Many organizations associated with the community reinvestment movement were among the first to mobilize against subprime lending. ACORN, the organization that arguably gets most of the blame, was actually one of the organizations warning against subprime loans. Moreover, community organizations like ACORN actively lobbied for stringent regulation of non-bank lenders and subprime lending (e.g. Markey 2008).

The CRA was designed to promote fair lending to all borrowers. Subprime and in particular predatory lending, on the other hand, were designed by lenders to make money by selling risky and overpriced loans, often to people who did not need these loans or could have applied for cheaper ones. CRA loans and subprime loans are simply two different things. There are many factors that play a significant part in unleashing the subprime mortgage crisis, but if the CRA is to be blamed for anything, it is only for not having been allowed to keep up with changes in the mortgage market.

Housing finance, social exclusion and social change

Mortgage lenders have the power to harm potential borrowers through direct exclusion (mortgage redlining) or indirect exclusion through overpriced loans (subprime and predatory lending). Financial institutions can provide the essential underpinning for positive social development, but they can also have destructive power (Jacobs 1961). The benefits of homeownership are extremely skewed in terms of location, class, gender, generation and ethnicity (Oliver and Shapiro 2006; Smith et al. 2008). The financial crisis and its aftermath have challenged integrative and stabilising dimensions of home ownership more generally speaking (Aalbers 2016b; Forrest and Hirayama 2015; King 2010).

In the Netherlands, self-regulation of the financial sector appeared to diminish redlining for a few years, but there is reason to believe that the financial crisis has led to the re-emergence of redlining practices. It is about time that Dutch policy makers realize that exclusion in the mortgage market is not something that only takes place in the US. Since 1999 there have been sporadic 'redlining meetings' between local bank directors and local aldermen, and between national bank directors and State Secretaries (Aalbers 2011). Talking to lenders sometimes helps a little bit in the short run, but in the long run it is insufficient as redlining is of an endemic nature and 'non-redlining' can never be assumed but needs to be monitored constantly. The *Algemene Wet Gelijke Behandeling* (AWGB, General Equal Treatment Act) can be used to fight redlining practices. AWGB's principle of 'reversing the burden of proof' provides a good start to address redlining lenders (CGB 2006), as they would have to demonstrate that they are *not* redlining. In this this turns out to be insufficient, a specific law against credit discrimination, such as the US *Community Reinvestment Act*, should be considered an option as well.

In the US, the old geography of redlining has not disappeared, but has been replaced—and to a large extent reproduced—by a new geography of predatory lending and 'overinclusion' (Aalbers 2009a; Hernandez 2009; Wyly *et al.* 2006). Redlining and predatory lending may appear as opposite but share a number of characteristics. Both processes harm households: redlining by directly excluding potential borrowers who live in certain areas, predatory lending does so indirectly by charging higher rates for certain borrowers. They disproportionally exclude the same social groups: low-income groups and racial minorities. Furthermore, predatory lending is either concentrated in formerly redlined areas or in the type of areas that used to be redlined. Indeed, exclusion *from* lending has been transformed into social exclusion *through* lending. In both cases, neighborhoods become exploited not for the gain of its residents but rather for the gain of others, like speculators, mortgage brokers and financial institutions.

Here we have it: finance is the great enabler to those who control it, not necessarily to those who receive it in the form of credit. Contrary to their ad campaigns, commercial banks and other lenders do not grant mortgage loans because they want to contribute to the homeownership dream but because they want to use the mortgage lending system to realize profits, possibly at the expense of borrowers. In a way, this also makes it harder to fight predatory lending than redlining in court or through regulation, just like it is more straightforward to conceptualize redlining than predatory lending as a mechanism of social exclusion. Whereas redlining ultimately is a black-and-white issue, predatory lending is more alike a sliding scale. When is someone overcharged in terms of interest and fees? When is a borrower considered trapped in an inadequate and overpriced loan? This makes it harder to imagine watertight regulation against predatory lending.

While the CRA was somewhat successful in diminishing the inequalities caused by redlining, new inequalities have emerged, characterized by less favorable loan terms and lack of adequate consumer protection from predatory practices. With the foreclosure crisis that started in 2007, predatory lending has been decreasing fast. But not only predatory lending has decreased; it has generally become more difficult to get a mortgage loan. There is anecdotal evidence that the some lenders have started charging higher fees for borrowers in certain zip codes, i.e. lenders have implemented another set of ‘redlining light’ policies.

In response to the crisis, thousands of legal cases have been initiated against unscrupulous lenders, brokers, securitizers and trusts—i.e. predatory lending is framed as white-collar crime—and at the same time the regulation of mortgage lending in general, and subprime lending and securitization in particular, has changed tremendously. It is beyond the scope of this paper to discuss the wide range of responses, but several authors argue that the changes are insufficient to create a safe, equitable mortgage market, and that more and especially better regulation is needed (e.g. Engel and McCoy 2011; Immergluck 2015). Or to rephrase, we could conclude that legally-defined harm is starting to include a wider range of socially-defined harm than before the crisis, but still fails to fully and adequately deal with the mechanisms and processes that create social exclusion from and through mortgage markets.

References

Aalbers, M.B. (2005). Who's afraid of red, yellow and green?: Redlining in Rotterdam. *Geoforum* 36(5), 562–580.

Aalbers, M.B. (2006). *Direct en indirect onderscheid op de hypotheekmarkt in Arnhem, Den Haag en Rotterdam*. Amsterdam: AMIDSt.

Aalbers, M.B. (2008). The financialization of home and the mortgage market crisis. *Competition & Change* 12(2), 148–166.

Aalbers, M.B. (2009a). Geographies of the financial crisis. *Area* 41(1), 34-42.

Aalbers, M.B. (2009b). Why the Community Reinvestment Act cannot be blamed for the subprime crisis. *City & Community* 8(3), 346–350.

Aalbers, M. (2010). Redlining: terug van weggeweest. *Rooilijn* 43(1), 28–33.

Aalbers, M.B. (2011). *Place, exclusion, and mortgage markets*. Oxford: Wiley–Blackwell.

Aalbers, M.B. (2016a). Geographies of mortgage markets. In: R. Martin and J. Pollard (Eds.) *Handbook of the Geographies of Money and Finance*, (in press). Cheltenham: Edward Elgar.

Aalbers, M.B. (2016b). *The financialization of housing: A political economy approach*. London: Routledge.

Avery, R.B., Brevoort, K.P. and Canner, G.B. (2006). Higher–priced home lending and the 2005 HMDA data. *Federal Reserve Bulletin* 92, 123–66.

Avery, R.B., Brevoort, K.P. and Canner, G.B. (2007). The 2006 HMDA data. *Federal Reserve Bulletin* 93, 73–109.

Becker, G.S. (1993). Nobel lecture: The economic way of looking at behavior. *Journal of Political Economy* 101(3), 385–409.

Brooks, R. and Simon, R. (2007). Subprime debacle traps even very credit-worthy. *Wall Street Journal.* 3 December, page A1.

Carr, J. and Schuetz, J. (2001). *Financial services in distressed communities: Framing the Issue, Finding Solutions*. Washington DC: Fannie Mae Foundation.

CGB (2006). *Risicoselectie op grond van postcode en verblijfsstatus. Een onderzoek uit eigen beweging naar onderscheid door hypothecair financiers*. Utrecht: Commissie Gelijke Behandeling.

CHF (2007a). *The code of conduct on mortgage credit*. Amsterdam: Contactorgaan Hypothecair Financiers.

CHF (2007b). *Explanatory notes to the code of conduct*. Amsterdam: Contactorgaan Hypothecair Financiers.

Dilanian, K. (2008). How Congress set the stage for a fiscal meltdown. *USA Today*, October 14, http://usatoday30.usatoday.com/money/economy/2008-10-12-congress-meltdown_N.htm, Accessed 14 October 2008.

Dymski, G.A. (2006). Discrimination in the credit and housing markets: Findings and challenges. In W. Rodgers (Ed.) *Handbook on the Economics of Discrimination*. (pp. 215–259). Cheltenham: Edward Elgar.

EMF (2014). *Hypostat 2014*. Brussels: European Mortgage Federation.

Engel, K. and McCoy, P. (2002). A tale of three markets: The law and economics of predatory lending. *Texas Law Review* 80(6), 1255–381.

Engel, K.C. and McCoy, P.A. (2011). *The subprime virus*. Oxford: Oxford University Press.

Fernandez, R. and Aalbers, M.B. (2016). Financialization and housing: Between globalization and Varieties of Capitalism. *Competition & Change* 20(2), 71-88.

Forrest, R. and Hirayama, Y. (2015). The financialisation of the social project: Embedded liberalism, neoliberalism and home ownership. *Urban Studies* 52(2), 233–244.

Goldstein, I. (2004). The economic consequences of predatory lending: A Philadelphia case study. In G.D. Squires (Ed.) *Why the Poor Pay More: How to Stop Predatory Lending* (pp. 39–79). Westport, CT: Praeger.

Goldstein, D. and Hall, K.G. (2008). Private sector loans, not Fannie or Freddie, triggered crisis. *McClatchy*, http://www.mcclatchydc.com/251/story/53802.html. Accessed 12 October 2008.

Hernandez, J. (2009). Redlining revisited: Mortgage lending patterns in Sacramento, 1930–2004. *International Journal of Urban and Regional Research* 33(2), 291–313.

Hillier, A.E. (2003). Redlining and the Home Owners' Loan Corporation. *Journal of Urban History* 29(4), 394–420.

Hofs, Y. (2009). Banken steeds strenger. Of toch niet? Wel? Ehh?? *De Volkskrant*, June 25.

Ip, G. and Paletta, D. (2007). Regulators scrutinized in mortgage meltdown. *The Wall Street Journal*, March 22, http://www.wsj.com/articles/SB117449440555444249, Accessed 22 March 2007.

Immergluck, D. (2009). *Foreclosed*. Ithaca, NY: Cornell University Press.

Immergluck, D. (2015). *Preventing the next mortgage crisis.* Lanham, MD: Rowman and Littlefield.

Jacobs, J. (1961). *The death and life of great American cities*. New York: Vintage.

Jordà , O., Schularick, M. and Taylor, A.M. (2014). *The great mortgaging: Housing finance, crises, and business cycles*. NBER Woking Paper No. 20501. Cambridge, MA: National Bureau of Economic Research.

King, P. (2010). *Housing boom and bust: Owner occupation, government regulation and the credit crunch*. London: Routledge.

Kroszner, R. (2009). The CRA and the recent mortgage crisis. In P. Chakrabarti, D. Erickson, R.S. Essen, I. Galloway and J. Olson (eds) *Revisiting the CRA: Perspectives on the future of the Community Reinvestment Act*, (pp. 8–11). Boston and San Francisco: Federal Reserve Banks of Boston and San Francisco.

Lazzarato, M. (2011). *The making of the indebted man: An essay on the neoliberal condition*. Los Angeles, CA: Semiotext(e).

Lenoir, R. (1974). *Les exclus: Un francais sur dix*. Paris: Seuil.

Liebowitz, S. (2008). The real scandal. How Feds invited the mortgage mess. *New York Post*, February 5, http://nypost.com/2008/02/05/the-real-scandal/, Accessed 5 February 2008.

Listokin, D. and Wyly, E.K. (2000). Making new mortgage markets: case studies of institutions, home buyers, and communities. *Housing Policy Debate* 11(3), 575–644.

Markey, E. (2008). ACORN led financial sector with warnings on lending. *City Limits Weekly*, October 27, http://www.citylimits.org/content/articles/viewarticle.cfm?article_id=3641, Accessed 27 October 2008.

Nassar, J. (2007). *Foreclosure, predatory mortgage and payday lending in America's cities*. Washington DC: Testimony before the U.S. House Committee on Oversight and Government Reform.

NCRC (2002) *Anti-predatory lending toolkit*. Washington, DC: National Community Reinvestment Coalition.

Nesiba, R.F. (1996.) Racial discrimination in residential lending markets: why empirical researchers always see it and economic theorists never do. *Journal of Economic* 30(1), 51–77.

Newman, K. (2012). The new economy and the city: Foreclosures in Essex County, New Jersey. In Aalbers M.B. (Ed.), *Subprime Cities: The Political Economy of Mortgage Markets,* (pp. 219–41). Oxford: Wiley-Blackwell.

NVB (2006). NVB: Banken maken geen onderscheid bij verstrekking hypothecaire financieringen. Press release, December 15. Amsterdam: Nederlandse Vereniging van Banken.

Pennington-Cross, A. (2002). Subprime lending in the primary and secondary markets. *Journal of Housing Research* 13(1), 31-50.

Oliver, M.L. and Shapiro, T.M. (2006). *Black wealth, white wealth: A new perspective on racial inequality*. New York: Routledge.

Quercia, R.G., Stegman, M. and Davis, W.R. (2004). Assessing the impact of North Carolina's anti–predatory lending law. *Housing Policy Debate* 15(3), 573–602.

Retsinas, N.P. and Belsky, E.S. (Eds) (2005). *Building assets, building credit. Creating wealth in low-Income communities*. Cambridge, MA and Washington, DC: Joint Center for Housing Studies and Brookings Institution Press.

Ronald, R. (2008). *The ideology of home ownership: Homeowner societies and the role of housing.* Basingstoke: Palgrave Macmillan.

Room, G. (1995). Poverty and social exclusion. In G. Room (Ed.) *Beyond the threshold: The measurement and analysis of social exclusion* (pp. 1–9). Bristol: Policy Press.

Ross, S.L. and Yinger, J. (2002). *The color of credit: Mortgage discrimination, research methodology, and fair-lending enforcement*. Cambridge, MA: MIT Press.

Sassen, S. (2014). *Expulsions: Brutality and complexity in the global economy*. Cambridge, MA: Harvard University Press.

Schloemer, E., Li, W., Ernst, K. and Keest, K. (2006). *Losing ground: Foreclosures in the subprime market and their cost to homeowners*. Washington DC: Center for Responsible Lending.

Schuyt, C.J.M. (2000). Essay: Sociale uitsluiting. In: C.J.M. Schuyt and C.A. Voorham (Eds) *Sociale Uitsluiting* (pp. 13–23). Amsterdam: SWP.

Smith, S.J., Searle, B.A. and Cook, N. (2008). Rethinking the risks of home ownership. *Journal of Social Policy* 38(1), 83–102.

Somerville, P. (1998). Explanations of social exclusion: Where does housing fit in? *Housing Studies* 13(6): 761–780.

Squires, G.D. (ed.) (1992). *From redlining to reinvestment: Community response to urban disinvestment*. Philadelphia: Temple University Press.

Squires G.D. (Ed.) (2004). *Why the poor pay more: How to stop predatory lending.* Westport, CT: Praeger.

Van den Eerenbeemt, M. and Rengers, M. (2009). Geen hypotheken meer in Vogelaarwijk. *De Volkskrant*, June 24, http://www.volkskrant.nl/economie/-geen-hypotheken-meer-in-vogelaarwijk~a343247/, Accessed 24 June 2009.

Wyly, E., Atia, M., Foxcroft, H., Hammel, D., and Philips-Watts, K. (2006). American home: predatory mortgage capital and neighbourhood spaces of race and class exploitation in the United States. *Geografiska Annaler B* 88(1), 105–32.

Wyly, E., Moos, M., Hammel, D. and Kabahizi, E. (2009). Cartographies of race and class: Mapping the class-monopoly rents of American subprime mortgage capital. *International Journal of Urban and Regional Research,* 33(2), 332–54.